

#### **47-8-18. Deposits.**

A. An owner is permitted to demand from the resident a reasonable deposit to be applied by the owner to recover damages, if any, caused to the premises by the resident during his term of residency.

(1) Under the terms of an annual rental agreement, if the owner demands or receives of the resident such a deposit in an amount greater than one month's rent, the owner shall be required to pay to the resident annually an interest equal to the passbook interest permitted to savings and loan associations in this state by the federal home loan bank board on such deposit.

(2) Under the terms of a rental agreement of a duration less than one year, an owner shall not demand or receive from the resident such a deposit in an amount in excess of one month's rent.

B. It is not the intention of this section to include the last month's prepaid rent, which may be required by the rental agreement as a deposit as defined in Subsection D [E] of Section 47-8-3 NMSA 1978. Any deposit as defined in Paragraph (1) of Subsection A of this section shall not be construed as prepaid rent.

C. Upon termination of the residency, property or money held by the owner as deposits may be applied by the owner to the payment of rent and the amount of damages which the owner has suffered by reason of the resident's noncompliance with the rental agreement or Section 47-8-22 NMSA 1978. No deposit shall be retained to cover normal wear and tear. In the event actual cause exists for retaining any portion of the deposit, the owner shall provide the resident with an itemized written list of the deductions from the deposit and the balance of the deposit, if any, within thirty days of the date of termination of the rental agreement or resident departure, whichever is later. The owner is deemed to have complied with this section by mailing the statement and any payment required to the last known address of the resident. Nothing in this section shall preclude the owner from retaining portions of the deposit for nonpayment of rent or utilities, repair work or other legitimate damages.

D. If the owner fails to provide the resident with a written statement of deductions from the deposit and the balance shown by the statement to be due, within thirty days of the termination of the tenancy, the owner:

(1) shall forfeit the right to withhold any portion of the deposit;

(2) shall forfeit the right to assert any counterclaim in any action brought to recover that deposit;

(3) shall be liable to the resident for court costs and reasonable attorneys'

fees; and

(4) shall forfeit the right to assert an independent action against the resident for damages to the rental property.

E. An owner who in bad faith retains a deposit in violation of this section is liable for a civil penalty in the amount of two hundred fifty dollars (\$250) payable to the resident.